



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA

Case Number: A359/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: 19/12/2018

SIGNATURE: _____

In the matter between:

JULY KHOZA

Appellant

And

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] The appellant was convicted in the Benoni Regional Court on a charge of robbery with aggravating circumstances, in that the appellant wielded a firearm at a certain Lizzy Masina, who was on her way to school where she was studying to become a caregiver. The appellant demanded her cell phone at gunpoint and Ms Masina who was, naturally, extremely scared complied with the appellant's demand.

[2] The appellant was sentenced to 24 years imprisonment.

[3] This appeal is only against sentence.

Legislative framework

[4] The appellant was a third offender in respect of the crime of robbery with aggravating circumstances. In the result, section 51(2) of the General Law Amendment Act, 105 of 1997 ("the Minimum Sentencing Act"), prescribes a minimum sentence of 25 years' imprisonment.

[5] The court *a quo* found that due to the fact that the appellant was incarcerated for a period of eight months prior to his conviction, constitutes substantial and compelling circumstances existed which justified a deviation from the minimum sentence and thus imposed the period of 24 years' imprisonment.

Test on appeal

- [6] Ms Makgwatha, counsel for the state, correctly referred to the test applicable when the sentence imposed by a trial court is on appeal. The first port of departure is the principle that the imposition of a sentence is pre-eminently a matter that falls within the discretion of the trial court.
- [7] A court of appeal may only interfere in narrowly defined circumstances, to wit where the sentence is vitiated by an irregularity, where the court *a quo* misdirected itself in imposing the sentence or if the sentence imposed induces a sense of shock. [See: *S v Salzwedel and Others* 1999 (2) SACR 586 SCA at 591 d-g.]

Grounds of appeal

- [8] Ms Augustyn, counsel on behalf of the appellant, submitted that the court *a quo* erred in:
- i. over emphasising the interests of the complainant;
 - ii. over emphasising the interests of the community, and
 - iii. attaching too much weight to the fact that the appellant was a third offender.

- [9] It is further submitted that the sentence is disproportionate to the circumstances under which the crime was committed and induces a sense of shock.

Discussion

- [10] These grounds of appeal presumably infer that the court *a quo* misdirected itself in not having proper regard to the three factors relevant to sentencing, that is, the circumstances under which the crime was committed, the interests of society and the personal circumstances of the accused.
- [11] The appellant does not rely on an irregularity and reliance on the ground that the sentence induces a sense of shock is, *in casu* where a lesser sentence than the prescribed minimum was imposed, without merit.
- [12] The court *a quo* duly considered and balanced the three factors pertaining to a fair sentence. In the premises, there was no misdirection by the court *a quo* in this regard.
- [13] Moreover, and in view of the provisions of the Minimum Sentencing Act, the appellant had to convince this court that substantial and compelling circumstances justifying a further deviation from the prescribed minimum of 25 years' imprisonment existed.

[14] Save for reiterating the personal circumstances of the appellant, namely that he was 31 years old, not married and that he has one minor child, which personal circumstances were duly considered by the court *a quo* and submitting that the circumstances under which the crime was committed was not that serious, the appellant has failed to advance any further substantial and compelling circumstances which the court *a quo* failed to take into account.

[15] In the premises and having regard to the jurisdictional factors justifying an interference by this court, I am of the view that the appeal against sentence has no merit and should be dismissed.

ORDER

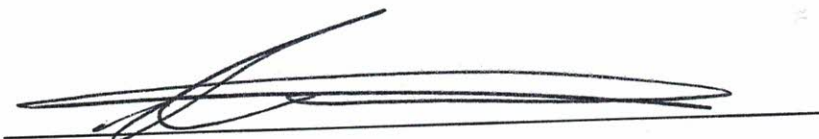
[16] In the premises, I make the following order:

The appeal against sentence is dismissed.



JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above a solid horizontal line.

A.T. MATHUNZI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

DATE HEARD

29 October 2018

JUDGMENT DELIVERED

19 December 2018

APPEARANCES

Counsel for the Appellant.

Instructed by.

Advocate L. Augustyn

Pretoria Justice Centre

(012 401 9200)

Counsel for the Respondent.

Instructed by.

Advocate M.J. Makgwatha

(084 874 1530)

Director of Public Prosecutions

